

46 Am. Jur. 2d Judges § 137

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Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

b. Appearance of Bias and Partiality as Grounds for Disqualification

§ 137. Acquaintance or relationship with counsel as grounds for judge's disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

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[Judge's previous legal association with attorney connected to current case as warranting disqualification, 85 A.L.R.4th 700](#)

Absent additional facts or evidence that gives the appearance of impropriety, the fact that members of the bench and the bar are acquaintances is not grounds for recusal.¹ Thus, the existence of a friendship between a judge and an attorney appearing before him or her, without more, does not automatically mandate the judge's disqualification from cases handled by that attorney.² Particularly in a rural area, it is to be expected that judges will be well acquainted with the members of the bar, including the prosecutors.³ However, the facts of a particular case may create an appearance of impropriety requiring disqualification of a judge on the basis of his or her acquaintance with a member of the bar.⁴

A cocounsel relationship, in and of itself, is likewise insufficient to require disqualification of a judge. In order to assess disqualification in the context of a prior cocounsel relationship, the important factors to be considered are the closeness of the cocounsel relationship, the possibility of any financial benefit to the judge resulting from the cocounsel association, the existence of any social or personal relationship between the trial judge and counsel, and the amount of time that has elapsed after termination of the cocounsel relationship.⁵

Observation:

Absent circumstances in which disqualification is mandated by the Code of Judicial Conduct, a prior professional relationship, such as a law partnership or legal colleagues, between a judge and an attorney will not be grounds for disqualification where that relationship ended some years ago.⁶

The mere association of a judge's former law clerk with a firm which appears before a judge does not by itself lead to a proceeding in which a judge's impartiality might reasonably be questioned.⁷ However, the rules and statutes of some jurisdictions prohibit a judge's former law clerk from practicing for a specified period before the judge.⁸

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Footnotes

- 1 [Committee for Utility Trimming, Inc. v. Hamilton](#), 290 Ark. 283, 718 S.W.2d 933 (1986); [In re Antonio](#), 612 A.2d 650 (R.I. 1992).
The allegation that the district judge who presided over the plaintiff's civil rights action against an university lived next door to the university's attorney did not create such an appearance of impropriety as to warrant recusal; without more, there was no basis for any conclusion that the judge's conduct caused a substantial and widespread lowering of public confidence in the courts. [In re Complaint of Judicial Misconduct](#), 816 F.3d 1266 (9th Cir. Jud. Council 2016).
- 2 [In re Disqualification of Park](#), 142 Ohio St. 3d 65, 2014-Ohio-5872, 28 N.E.3d 56 (2014).
- 3 [State v. Strayer](#), 242 Kan. 618, 750 P.2d 390 (1988); [Medley v. State](#), 600 So. 2d 957 (Miss. 1992).
- 4 [Washington v. Montana Min. Properties, Inc.](#), 243 Mont. 509, 795 P.2d 460 (1990).
Allegations in the defendant's motion to disqualify the trial judge, that the judge was a social-networking website "friend" of the prosecutor assigned to his case, were sufficient to create the impression in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial, and thus, the motion was legally sufficient to require disqualification. [Domville v. State](#), 103 So. 3d 184 (Fla. 4th DCA 2012).
- 5 [Bonelli v. Bonelli](#), 214 Conn. 14, 570 A.2d 189, 85 A.L.R.4th 691 (1990).
As to the disqualification of a judge for acting as an attorney in a case, see §§ 152 to 162.
- 6 [In re Disqualification of Park](#), 142 Ohio St. 3d 65, 2014-Ohio-5872, 28 N.E.3d 56 (2014).
- 7 [Marxe v. Marxe](#), 238 N.J. Super. 490, 570 A.2d 44 (Ch. Div. 1989).
- 8 [Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority](#), 330 Pa. Super. 420, 479 A.2d 973 (1984).

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